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HAROLD B. WILLEY, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. ~~580~~ 22

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,

Petitioner,

v.

FIRST NATIONAL BANK IN INDIANA, PA.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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FIRST NATIONAL BANK IN INDIANA, PA.,

Respondent.

Reply Brief in Behalf of First National Bank in Indiana in Opposition to Petition for Writ of Certiorari.

Counter-Statement of Facts.

This case was brought by petitioner as plaintiff against four defendants. The Complaint charged each defendant separately with the conversion of Home Owners' Loan Corporation bonds, payable to bearer, as the property of plaintiff. No charges of conspiracy were alleged or made against the defendants (see Complaint, Applt's App. 20a-23a). The case against one of the defendants, Federal Reserve Bank of Cleveland, was dismissed on motion at the close of plaintiff's case (Applt's App. 285a-300a and 341a). The trial Court submitted the case to the jury as three separate cases against the remaining defendants

(Applt's App. 429a). Three separate verdicts were rendered against these defendants and judgment entered thereon (Applt's App. 439a). Respondent, First National Bank in Indiana, Pa. took its appeal from the judgment against it to U. S. Court of Appeals, at No. 11,526. The Court of Appeals, by a majority of its members, reversed the judgment against First National Bank in Indiana and directed the District Court to enter judgment in its favor. The Petition for Writ of Certiorari, so far as this *respondent is concerned*, is to review this decision of the Circuit Court of Appeals.

We make the foregoing counter-statement for the purpose of accuracy, and to avoid the confusion as a result of petitioner's failure to allocate the relevant material facts to each of the defendants *separately*. For a further accurate statement of relevant material facts applicable to this respondent, First National Bank in Indiana, we respectfully refer this Honorable Court to the fair and comprehensive statement of the facts as they appear in the majority opinion of the U. S. Court of Appeals.

Argument in Behalf of First National Bank in Indiana Against the Granting of a Writ of Certiorari.

This case on appeal was argued before Goodrich, McLaughlin and Staley, JJ. on April 19, 1955. The Court, *of its own volition*, ordered a re-argument on June 16, 1955 before the Court *en banc*, consisting of Biggs, P. J., Maris, Goodrich, McLaughlin, Kalodner, Staley and Hastie, JJ. The majority decision was by Biggs, P. J., Maris, Staley and Hastie, JJ. No motion for re-argument was made by petitioner after this decision was rendered.

The jurisdiction of this Court is sought by petitioner "under 28 U. S. C. A., Section 1254 (1)". In the case of Stamey v. United States, 37 Fed. (2nd), 188, 190, (December 11, 1929) is stated the reasons given by the Senate Judiciary Committee for recommendation of Section 240 of the Judicial Code (which was replaced by the Act of June 25, 1948, 28 U. S. C. A. Section 1254 (1) and on which the Act of June 25, 1948 was based) as follows:

> "The central thought is this, that litigants have, first, a trial in the District Court, and then by appeal or writ of error, a trial in the Circuit Court of Appeals —a court that ranks as high or higher than the Supreme Tribunal of the States. It is our belief that here ordinary litigation should end, and that the case should not go to the Supreme Court of the United States unless the questions involved are of grave public concern, or unless serious uncertainty attends the decisions of the Circuit Court of Appeals, by the reason of conflict in the rulings in these courts or the courts of the states".

The specific considerations governing review on certiorari are to be found in Rule 19 of the Supreme Court Rules, 28 U. S. C. A. Supreme Court Rule 19.

If this case is to come within the jurisdiction of this Court, the decision to be reviewed must be either

(a) In conflict with decisions of other Circuit Courts, or

(b) Must involve important matters of public interest.

Magnum Import Co. v. Coty, 262 U. S. 159 (May 7, 1923);

Forsythe v. Hammond, 166 U. S. 506 (April 19, 1897);

National Metropolitan Bank v. U. S., 323 U. S. 454, 456 (Dec. 13, 1944);

Rice v. Sioux City Memorial Park Cemetery, 349 U. S. 7 (May 9, 1955).

In the opinion of the Court in the case of Magnum Import Co. v. Coty, *supra*, the Court, on page 163, states the following:

> "The question how the court shall exercise this power next arises. Jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, first to secure uniformity of decisions between those courts in the nine circuits, and, second, to bring up cases involving questions of importance which it is in the public interest to have decided by the court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing.
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> "The petition should, in the first instance be made to the Circuit Court of Appeals which with its complete knowledge of the case may, with full consideration, pass on it. That court is in a position to judge first whether the case is one likely under our practice to be taken up by us on certiorari."

The Court, in its opinion in the case of National Metropolitan Bank v. U. S., *supra*, states on page 456, the following:

> "Only recently in Clearfield v. U. S., 318 U. S. 363, we had occasion to consider rights and liabilities of the government which stem from the issuance of commercial paper. Our conclusion was that legal questions involved in controversy over such papers are to be resolved by application of federal, rather than local law, and that in the absence of an applicable Act of Congress, federal courts must fashion the governing rules."

In the case of Rice v. Sioux City Memorial Park Cemetery, Inc., *supra*, decided May 9th of 1955, the majority opinion by Mr. Justice Frankfurter states with reference to the issuing of a writ of certiorari, on page 74 as follows:

> "A federal question raised by petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this court does not sit to satisfy a scholarly interest in such issues, nor does it sit for the benefit of particular litigants. (Magnum Import Company v. Coty, 262 U. S. 159, 163; see also address of Chief Justice Vinson before the American Bar Association Sept. 1949, 69 Sup. Ct. v., VI; address of Mr. Chief Justice Hughes before American Law Institute May 10, 1934 XI Proc. Am. Law Inst. 313). 'Special and important reasons' imply a reach to a problem beyond the academic or sporadic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the court's duty to avoid discussions of constitutional issues unless avoidance becomes evasive."

In view of the foregoing authorities, we respectfully submit that there is no possible grounds for a conflict of decisions with other circuits concerning the "rights and liabilities" of this respondent, First National Bank in Indiana, in this case, nor is there a "matter of public interest involved." The decisions of the United States Supreme Court as are fully stated and discussed in the majority opinion of the Court of Appeals have stated clearly the law as to United States Government paper.

The Court of Appeals was required to follow the Federal Law as determined by the United States Supreme Court. Schwarz v. Witwer Grocer Co., 141 Fed. 2nd. 341 (8th Circuit Mar. 20, 1944; re-argument refused Mar. 30, 1944; certiorari denied May 29, 1944, 322 U. S. 753).

We do not here discuss the merits of the case because they are fully stated in the opinion of the Court of Appeals and are not at this time at issue. Counsel for First

National Bank in Indiana, Pennsylvania therefore respectfully submit that certiorari should be denied.

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